> cases involving state tax administration make it the duty of federal courts to withhold relief when a state legislature has provided an adequate scheme whereby a taxpayer may maintain a suit to challenge a state tax. The taxpayer may assert his federal rights in the state courts and secure a review by the Supreme Court." 463 F.2d at 24.

The further rationale of the court, 453 F.2d at 26-28 is compelling. Citing *Great Lakes Dredge & Dock Co.* v. *Huffman, supra,* as well as *First National Bank of Greeley* v. *Board of Commissioners,* 264 U.S. 450, (1924), the court of appeals concluded that the policy expressed by the Tax Injunction Act, required the holding that:

> "in matters involving state tax law state remedies must be pursued where they are plain, adequate and complete."

The court in *Bland* v. *McHann supra* noted that some district courts found §1341 applicable only to requests for anticipatory relief basing their decisions "solely on the language of the stateute. . .but there is more" at 25. The court explained that the "more" included the deference to state fiscal operations expressed in *Matthews* v. *Rodgers,* 284 U.S. 521 (1932), and *First National Bank of Greeley* v. *Board of Commissioners, supra,* in which the court ruled that Plaintiffs could not seek relief in the form of a request for a state refund in the federal courts, where a remedy was available under the statutes. That the Act had as its primary purpose the limitation of federal jurisdiction over such an important local concern as taxation, was recently affirmed by this court in *Rosewell* v. *LaSalle National Bank,* ____ U.S. ____, 101 S.Ct. 122[1], 1231 (1981).

Lastly, the court in *Bland* v. *McHann, supra* at 27 noted that an action for a refund "is an integral part of state tax administration."

In *Kelly* v. *Springett, supra,* also cited by the district court, a taxpayer brought an action under 42 USC §1983 against a state

narcotics agent, and members of the state Franchise Tax Board, asserting that his civil rights were violated by confiscation of money in his possession and in his bank account. Part of the relief requested was a demand for judgment of an amount of money seized under the jeopardy assessment of the California Franchise Tax Board, which the Court referred to as "nothing less than a claim for a tax refund." 527 F.2d at 1093.

Other courts in accord with the decisions in *Bland* v. *McHann, supra,* and *Kelly* v. *Springett, supra,* are as follows: *United States* v. *State Tax Commission of the State of Mississippi,* 505 F.2d 633 (5th Cir. 1974); *United Gas Pipe Line Co.* v. *Whitman,* 595 F.2d 323 (5th Cir. 1979); *Evangelical Catholic Communion, Inc.* v. *Thomas,* 373 F.Supp. 1342 (D.Vt. 1973) *aff'd* 493 F.2d 1391 (2nd Cir. 1974); *Natural Gas Pipe Line Company of America* v. *Sergeant,* 337 F.Supp. 88 (D. Kans. 1972); *Robinson Protective Alarm Co.* v. *City of Philadelphia,* 581 F.2d 371 (3rd Cir. 1978); *O'Brien* v. *Dreyfus,* 493 F.Supp. 476 (E.D. Wis. 1980).

Individual Petitioners' contention that their action cannot be designated as a refund action is without merit as Petitioners only demonstrable alleged injury is the amount of money paid in taxes as a result of the alleged overassessment of their property.

C. Other Actions for Damages

Despite Petitioners' contentions to the contrary that their action is in some way not of the same genre as "refund actions", the courts which have considered the issue have held that §1341 bars such damage actions, with the exception of the court in *Fulton Market Cold Storage Co.* v. *Cullerton, supra.* The reasoning of the courts in *Advertiser Company* v. *Wallace,* 446 F.Supp. 677 (M.D. Ala. 1978); *Ludwin* v. *City of Cambridge, supra,* and *Fair Assessment in Real Estate Association Inc.* v. *McNary, supra,* is consistent with the reasoning used throughout all of the cases in which the courts have held that §1341 is a bar to federal consideration in matters of state tax ad-

ministration. This consistency is expected because the principles, purpose and intent of §1341 are the same regardless of the label placed on the action brought.[7]

Without further belaboring the point, the court's incisive reasoning in *Advertiser Company* v. *Wallace, supra,* is directly on point as complainant in that action, as Petitioners do here, brought an action for both actual and punitive damages premised on 42 USC §1983. The Court stated at 679, 680:

> "Arguably, the case law leaves open the precise issue presented here - i.e., whether a Section 1983 action seeking only compensatory and punitive damages is barred by Section 1341. Yet, the same policies which precluded awarding anticipatory relief or a refund should also preclude an award of the damages sought in this case. Although perhaps less coercive than anticipatory relief and less intrusive than a refund, the damage award plaintiff seeks, especially its request for punitive damages, still is designed to deter collection of the taxes now being assessed by defendants. . . ." *Id.* at 679, 680.

Further, such inquiry unnecessarily entangles the federal court in the very heart of the taxation process - that of the determination of assessments. As the court stated in *Ludwin* v. *City of Cambridge, supra,* at 610:

> ". . .we believe a court would ordinarily find it difficult or impossible to decide whether illegal practices had occurred of such gravity as to render the local officials answerable in damages without first ascertaining the correctness of the assessment, a question which both comity and common

---

[7]Several other courts have considered the issue of "damages" in this context but in conjunction with prayers for equitable relief. See *Hickman* v. *Wujick,* 488 F.2d 875 (2nd Cir. 1973); *Horn* v. *O'Cheskey,* 378 F.Supp. 1280 (D. N.M. 1974); *Evangelical Catholic Communion, Inc.* v. *Thomas,* 373 F.Supp. 1342 (D. Vt. 1973).

sense indicate is for the state tribunals." See also *Fair Assessment in Real Estate Inc.* v. *McNary, supra.*

The contention of Petitioners that, "the district court's determination of liability requires only that it examine the facts relating to each individual tax official, as to whether there was sufficient personal involvement and malice to sustain a claim against him under §1983" puts the cart before the horse in the determination of liability. The initial question which must be reached by any court considering the matter is whether the taxing process has harmed Petitioners in a constitutional sense, which obviously requires an inquiry into the taxation process itself. It is only after that determination is made that the personal involvement of individual taxing officials becomes relevant.

It is apparent, after examination of the persuasive judicial holdings construing §1341 as a broad pronouncement of federal court non-interference in state taxation matters, that the court's reasoning in *Fulton Market Cold Storage Co.* v. *Cullerton, supra,* is misdirected. The court in *Fulton Market* ignored the broader purpose of §1341 and instead focused upon the language of the Tax Injunction Act as countenanced against a limited examination of the legislative history. The court in *Fulton Market* also took a simplistic approach in its analysis of the pertinent issues that are necessary for a determination of liability and damages in a §983 action, which approach Petitioners adopt. The Court in *Fulton Market* found that becauase there was no state statute or regulation in question, or anticipatory relief requested, the court's determination of liability would not interfere with the state taxing process. This is a rather naive view, as a §1983 action will necessarily involve the federal court intimately with the complex process of the *application* of various state statutes and regulations to the individual taxpayer.

Likewise, the court's analysis of a §1983 action ignored the very nature of that action which is the availability of a §1983 action prior to any exhaustion of administrative or state remedies

even if those remedies are found to be adequate. Wilwording v. *Swenson, Warden,* 404 U.S. 249 (1971); *Monroe* v. *Pape,* 365 U.S. 167 (1961); *Carter* v. *Stanton,* 405 U.S. 669 (1972). Thus, the court in *Fulton Market* ignored the procedural aspects of a §1983 action in its analysis. It is not difficult to imagine the disruptive effect a §1983 damage action will have in state taxation matters since that action may be brought *prior to* an attempted exhaustion of admininstrative and state remedies which may be otherwise wholly adequate. This will be treated further in Point V.

Respondents do not take issue with Petitioners' argument that a damage remedy under §1983 is "a vital component of any scheme for vindicating cherished constitutional guarantees' ". *Gomez* v. *Toledo,* 446 U.S. 635, 639, quoting *Owen* v. *City of Independence,* 445 U.S. 622, 651 (1980). However, this court's holding that §1341 bars damage actions in federal court would not infringe upon Petitioners' right to bring such an action to vindicate those rights in state court. §1341 bars actions in federal court only where "*a plain, speedy and efficient remedy may be had in the courts of such state.*" Petitioners may pursue their §1983 action in state court with review ultimately before this court. *Huffman* v. *Pursue Ltd.,* 420 U.S. 592 (1975). If Petitioners do not have a plain, speedy and efficient remedy in state court, §1341 does not act as a bar to such an action. The district court, in the case at bar, specifically found that Petitioners did have an available state remedy.[8] *Fair Assessment in Real Estate Association, Inc.* v. *McNary, supra,* at 1234, Pet App. A-8.

---

[8] A taxpayer disssatisfied with his assessment made pursuant to Section 137.115(1) R.S.Mo. 1978, may appeal to the County Board of Equalization. Section 137.385 RSMo. 1978. Further appeal is provided under section 138.430 R.S.Mo. 1978 to the State Tax Commission of Missouri with subsequent judicial review to the Circuit Court, Court of Appeals and Supreme Court of Missouri. Sections 536.100, 536.140(6).

Thus, affirming the district court's holding that §1341 bars Petitioners' damage action is consistent with the broad prophylactic purposes of the Act while not foreshortening the remedies available to Petitioners.

Petitioners' final argument in Point IV of their Brief may be disposed of simply. Petitioners, by repetition rather than analysis, attempt to restrict the bar of §1341 to equitable actions by raising prior decisions of the court as conclusive on the issue. However, in the cases cited by Petitioners, "from *Great Lakes* to *Rosewell*," the court has only considered the issue of federal jurisdiction in state tax matters within the context of equitable actions. If this court has never indicated that §1341 might apply to bar actions at law for damage, as Petitioners assert, it is quite simply because the court has not previously been asked. The court in *Rosewell* specifically refused to find that post-Act cases did more than confirm that " 'The statute has its roots in equity practice,' " thus leaving open the very question now before the court. 101 S.Ct. at 1235, citing *Tully* v. *Griffin, Inc.*, 429 U.S. 68, 73 (1976).

It is of interest to note the expansive language from *Tully* v. *Griffin Inc., supra,* which Petitioners cite purportedly in support of their contention that the act should be limited to actions in equity. The court in *Tully* found that "the statute has its roots in equity practice, *in principles of federalism, and in recognition of the imperative need of the State to administer its own fiscal operations.*" 429 U.S. at 73 (emphasis added). It is the last consideration that this court in *Rosewell* at 1233, concluded wsa the principal motivating force behind the Act: "this legislation was first and foremost a vehicle to limit drastically federal district court jurisdiction to interfere with so important

---

Additionally, as cited by the District Court in *Fair, supra,* a taxpayer may bring an action such as was brought in *Breckenridge Hotels Corp.* v. *Leachman,* 571 S.W.2d 251 (Mo banc 1978) pursuant to Section 139.031 R.S.Mo. 1978, raising the same issues as Petitioners allege in their complaint.

a local concern as the collection of taxes". From the roots, the natural fruition of the Act is to bar Petitioners' damage action.

V. Barring An Action For Damages Is Within The Broad Purposes Of §1341

Consistent with the conclusion of the courts that have barred actions for damages under §1341, that to permit damage actions against state taxing officials will defeat the broad purposes of the act as previously enumerated. As the district court stated in *Fair Assessment in Real Estate Association Inc.* v. *McNary*, 478 F.Supp. 1231 (E.D. Mo. 1979) *aff'd*, 622 F.2d 415 (8th Cir. 1980) Pet. App. A-4:

> "To allow such suits would cause disruption of the states' revenue collection systems equal to that caused by anticipatory relief. State tax collection officials could be summoned into federal court to defend their assessments against claims for refunds as well prayers for punitive damages, merely on the assertion that the tax collected was willfully and maliciously discriminatory against a certain type of property. Allowance of such claims would result in this Court being a source of appellate review of all state property tax classifications. This Court can not condone such a result" at 1233-34. Pet. App. A-7

It is to bar the injection of the federal courts into state taxation matters which is the primary purpose of §1341. The long-standing deference to the states in matters of state and local financing differentiates federal court treatment of actions which seek to disrupt those matters from other damage actions brought against those same officials or officials similarly situated. Damage actions brought against these same state or local public officials in such areas as employment, the exercise of police powers, and regulation of private enterprises have never been accorded a similar deference because these matters concerned the exercise by public officials of duties which were not essential to the very existence of state government. The basis for federal

court deference in state taxation matters is rooted in the concern for the preservation of the sovereignty of the states which, in turn, is dependent upon the preservation of the state taxation system and the implementation of that system by public officials. Thus the barring of damage actions against state taxing officials is consistent with prior precedent which embodies the principles of federalism, comity and abstention in matters of state taxation. See *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 542. n. 6 (1972); *Perez* v. *Ledesma*, 401 U.S. 82, 127 N. 17 (1971); *Matthews* v. *Rodgers*, 284 U.S. 521, 525 (1932).

Where there is no indication that Petitioners' federal rights will not otherwise be preserved, the federal courts must show scrupulous regard for the possible interference with the independence of state governments by the maintenance of actions that so threaten. *Matthews* v. *Rodgers, supra,* at 525. Petitioners' action is such an action.

This is all the more apparent in taking the analysis of Petitioners' damage action one step further. Although Petitioners stress that their action is brought against the taxing officials individually, it would be ludicrous to take the position that the tax officials were performing their respective functions in something other than their official capacity. The Respondents' actions were identifiable with the policy and practices of the governments for whom they were acting.

Lastly, because there is no exhaustion requirement as a prerequisite to the bringing of a §1983 damage action, there is the potential for §1983 actions to be initiated in federal court prior to any attempt by the taxpayer to remedy the contested tax in the forum provided by state law. The usually carefully orchestrated state appeals process for the contest of tax liability (and the state officials involved in that process) will be disrupted. Tax officials will necessarily become entangled not only in the state appeals process but will be required to defend the taxation process and procedures in federal court, without having the opportunity to correct a possibly erroneous tax. This

is the very evil which the Act was intended to prevent - interference with state tax matters. As the Court in *Fair Assessment* at 1234, Pet. App. A-8, concluded:

> "It is clear that plaintiff's proper course for relief is through the state's channels. This court should not interfere in the legitimate interests of the state in implementing its own property tax system. Cf. *Younger, supra.* To allow a suit under the present circumstances would be doing just that."

CONCLUSION

For the reasons stated above, Respondents Gene McNary, William A. Skaggs, Edmund J. Pung, Charles T. Schneider, and Frank J. Antonio respectfully request that the order of the Court of Appeals for the Eighth Circuit be affirmed.

Respectfully submitted,

THOMAS W. WEHRLE
ST. LOUIS COUNTY COUNSELOR

ANDREW J. MINARDI
ASSOCIATE COUNTY COUNSELOR

KAREN C. MOCULESKI
ASSISTANT COUNTY COUNSELOR

TIMOTHY L. GROSCH
ASSISTANT COUNTY COUNSELOR

County Government Center
41 South Central
Clayton, MO 63105
889-2042

Attorneys for Respondents,
McNary, Skaggs, Pung, Schneider
and Antonio

APPENDIX

APPENDIX A

Revised Statutes Of Missouri, 1978

§137.115: Real and tangible personal property-time and manner of assessment-forms may be mailed by assessor in second, third, and fourth class counties.-1. All other laws to the contrary notwithstanding, the assessor or his deputies in all counties of this state including the city of St. Louis shall, between the first day of January and the first day of June, annually make a list of all real and tangible personal property taxable in his city, county, town or district and, except as otherwise provided in subsections 2 and 3 hereof, shall assess the property at thirty-three and one-third percent of its true value in money in the following manner: He shall call at the office, place of doing business, or residence of each person required by this chapter to list property, and require the person to make a correct statement of all taxable real property in the county owned by the person, or under his care, charge or management, and all taxable tangible personal property owned by the person or under his care, charge or management, taxable in the county, except merchandise upon which he is required to pay a license tax.

§137.385: Appeal from assessment-form-time for filing. - Any person aggrieved by the assessment of his property may appeal to the county board of equalization. An appeal shall be in writing and the forms to be used for this purpose shall be furnished by the county clerk. Such appeal shall be lodged with the county clerk as secretary of the board of equalization before the third Monday in June; provided, that the board may in its discretion extend the time for filing such appeals.

§138.430: Right of appeal-investigation. - Every owner of real property or tangible personal property and every merchant and manufacturer shall have the right of appeal from the local boards of equalization under rules prescribed by the state tax commission. Said commission shall investigate all such appeals

and shall correct any assessment which is shown to be unlawful, unfair, improper, arbitrary or capricious.

139.031. Payment of taxes under protest - action, when commenced, how tried - refunds, how made - interest not allowed. -1. Any taxpayer may protest all or any part of any taxes assessed against him, except taxes collected by the director of revenue of Missouri. Any such taxpayer desiring to pay any taxes under protest shall, at the time of paying such taxes, file with the collector a written statement setting forth the grounds on which his protest is based, and shall further cite any law, statute, or facts on which he relies in protesting the whole or any part of such taxes.

2. The collector shall disburse to the proper official all portions of taxes not so protested, and he shall impound in a separate fund all portions of such taxes which are so protested. Every taxpayer protesting the payment of taxes, within ninety days after filing his protest, shall commence an action against the collector by filing a petition for the recovery of the amount protested in the circuit court of the county in which the collector maintains his office. If any taxpayer so protesting his taxes shall fail to commence an action in the circuit court for the recovery of the taxes protested within the time herein prescribed, such protest shall become null and void and of no effect, and the collector shall then disburse to the proper official the taxes impounded, as hereinabove provided.

3. Trial of the action in the circuit court shall be in the manner prescribed for nonjury civil proceedings, and after determination of the issues, the court shall make such orders as may be just and equitable to refund to the taxpayer all or any part of the taxes paid under protest or to authorize the collector to release and disburse all or any part of the impounded taxes. Either party to the proceedings may appeal the determination of the circuit court.

4. All the county collectors of taxes, and the collector of taxes in any city not within a county, shall, upon written application of a taxpayer, refund any real or tangible personal property tax mistakenly or erroneously paid in whole or in part to the collector. Such application shall be filed within one year after the tax is mistakenly or erroneously paid. The county court, or other appropriate body or official, shall make available to the collector funds necessary to make refunds under this subsection by issuing warrants upon the fund to which the mistaken or erroneous payment has been credited, or otherwise.

5. No taxpayer shall receive any interest on any money paid in by him either erroneously or under protest.

§536.100: Party aggrieved entitled to judicial review. - Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in Sections 536.100 to 536.140, unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this section. Unreasonable delay on the part of any agency in deciding any contested case shall be grounds for an order of the court either compelling action by the agency or removing the case to the court for decision.

§536.140. - Scope of judicial review - Judgment - appeals. -1. The court shall hear the case without a jury and, except as otherwise provided in subsection 4, shall hear it upon the petition and record filed as aforesaid.

* * *

6. Appeals may be taken from the judgment of the court as in other civil cases.

Office-Supreme Court, U.S.
FILED
JUN 29 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-427

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., et al.,
Petitioners,

v.

GENE McNARY, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS WILLIAMS, OTTO AND SNYDER

JOHN ASHCROFT
Attorney General

MICHAEL L. BOICOURT
Assistant Attorney General

P.O. Box 899
Jefferson City, Missouri 65102
(314) 751-3321

Attorneys for Respondents Williams, Otto and Snyder

June, 1981

KELLY PRESS, INC., 201 S. Eighth St., Columbia, Missouri Dial 314/449-4163

I

QUESTIONS PRESENTED[1]

Whether the petitioners' characterization of their lawsuit as one based upon the provisions 42 U.S.C. § 1983 citing interference with their property rights as an alleged result of overassessment of their real property situated in St. Louis County is sufficient to circumvent the jurisdictional bar of 28 U.S.C. § 1341.[2]

---

[1]The question framed by the petitioners is unacceptable to respondents Williams, Otto and Snyder because it would require the Court to assume that the complaint of petitioners, dismissed by the United States District Court for the Eastern District of Missouri, constituted "a suit at law for damages" whereas these respondents take the position that the suit filed by the petitioners in the District Court was in reality a complaint for refund of state property taxes paid.

[2]The caption of this case in this Court, as set forth in the "Brief for Petitioners" contains the names of all parties to this proceeding in the United States District Court for the Eastern District of Missouri and in the United States Court of Appeals for the Eighth Circuit. Therefore, Supreme Court Rule 34.1(b) has been satisfied.

TABLE OF CONTENTS

Questions Presented I
Table of Contents II
Citation of Authorities III
Statement of the Case 1
Summary of the Argument 6
Argument
I. It is Clear That When a Complaint Alleging Federal Court Jurisdiction Under § 1983 Collides Full Force With the Specific Congressional Limitation on Federal Jurisdiction Embodied by § 1341, the Limitation on Federal Jurisdiction Must Prevail 11
II. The Petitioners' Complaint was Appropriately Dismissed, Completely Aside From the Existence of § 1341, and the District Judge Appropriately Referred to the Principles of Comity Which Dictate Such Result 13
III. Federal Courts Have Not Found the Jurisdictional Bar of § 1341 Limited Only to Suits Seeking Injunctive Relief 16
IV. The Relief Sought by Petitioners can Clearly be Characterized as a Suit for a Refund of Taxes Paid in Previous Years Which is Barred by § 1341 19
V. Missouri's Administrative and Judicial Processes Provide to the Petitioners a Plain, Speedy and Efficient Remedy 24
VI. The Petitioners Should Not be Allowed to Circumvent the Jurisdictional Bar of § 1341 as a Result of the Purely Procedural Distinction Between an Injunction Against the Enforcement of State Tax Laws and a Tax Refund Against State Tax Officials 26
Conclusion 29

CITATION OF AUTHORITIES

Cases

Advertiser Company v. Wallace, 446 F.Supp. 677 (N.D.Ala. 1978) 8, 18, 23

Aluminum Company of America v. Department of the Treasury of the State of Michigan, 522 F.2d 1120 (6th Cir. 1975) 16

American Commuter's Association v. Levitt, 405 F.2d 1148 (2nd Cir. 1969) 6, 12

Bland v. McHann, 463 F.2d 21 (5th Cir. 1972), *cert.* denied, 410 U.S. 966 (1973) 6, 8, 12, 18, 20, 21

Breckenridge Hotels Corporation v. Leachman, 571 S.W.2d 251 (Mo. banc 1978) 26, 28

Central Steel & Wire Co. v. City of Detroit, 99 F.Supp. 639 (E.D.Mich. 1951) 23

Coon v. Teasdale, 567 F.2d 820 (8th Cir. 1977) 16

Evangelical Catholic Communion, Inc. v. Thomas, 373 F.Supp. 1342 (D.Vt. 1973), *aff'd*, 493 F.2d 1397 (2nd Cir. 1974) 17, 18, 23

Fair Assessment in Real Estate Association, Inc. v. McNary, 478 F.Supp. 1231 (E.D.Mo. 1979) 4

First National Bank v. Board of County Commissioners, 264 U.S. 450 (1924) 7, 13, 21

Ford Motor Credit Company v. Louisiana Tax Commission, 440 F.2d 675 (5th Cir. 1971) 16

Fulton Market Cold Storage v. Cullerton, 582 F.2d 1071 (7th Cir. 1978), *cert.* denied, 439 U.S. 1121 (1979) 16, 22

Gomez v. Toledo, 446 U.S. 635 (1980) 11

Gray v. Morgan, 371 F.2d 172 (7th Cir. 1966) 17

Great Lakes Dredge & Dock Company v. Huffman 319 U.S. 293 (1943) 7, 8, 14, 15, 16, 27

Green v. Klinkofe, 422 F.Supp. 1021 (N.D.Ind. 1976)....16

Hickmann v. Wujick, 488 F.2d 875 (2nd Cir. 1973) 18, 23

Horn v. O'Cheskey, 378 F.Supp. 1280 (D.N.M. 1974) ..18, 23

John Calvin Manor, Inc. v. Aylward, 517 S.W.2d 59 (Mo. 1974) 26

Kelly v. Springett, 527 F.2d 1090 (9th Cir. 1975) ..8, 18, 20

Kistner v. Miliken, 432 F.Supp. 1001 (E.D.Mich. 1977) 23

Louisville and Nashville Railroad Company v. Atkins, 390 F.Supp. 576 (M.D.Tenn. 1975) 23

Ludwin v. City of Crambridge, 592 F.2d 606 (1st Cir. 1979) 18

Lynch v. Household Finance Corporation, 405 U.S. 538 (1972) 6, 11

Maine v. Thiboutot, ____ U.S. ____, 100 S.Ct. 2502 (1980) 11

Matthews v. Rodgers, 284 U.S. 521 (1932) 7, 14, 15, 28

Natural Gas Pipe Line Company of America v. Sergeant, 337 F.Supp. 88 (D.Kans. 1972) 18

Ott v. Mississippi Valley Barge Line Company, 336 U.S. 169 (1949) 23

Owen v. City of Independence, 445 U.S. 622 (1980) 11

Parratt v. Taylor, ____ U.S. ____, 49 U.S.L.W. 4509 (1981) 9, 20, 24

Paul V. Davis, 424 U.S. 693, 701 25

Rosewell v. LaSalle National Bank, ____ U.S. ____, 101 S.Ct. 1221 (1981) 6, 9, 12, 15, 27

Shipiro v. Columbia Union National Bank & Trust Company, 576 S.W.2d 310 (Mo. banc 1978) 26

Southland Mall, Incorporation v. Garner, 293 F.Supp. 1370 (W.D.Tenn. 1968) 23

Stafford v. Muster, 582 S.W.2d 670 (Mo. banc 1979) 26

State ex rel. Cassilly v. Riney, 576 S.W.2d 325 (Mo. banc 1979) 5, 26

Tully v. Griffin, 429 U.S. 68 (1976) 15, 22

United Gas Pipe Line Company v. Whitman, 595 F.2d 323 (5th Cir. 1979) 21

United States v. State Tax Commission of the State of Mississippi, 505 F.2d 633 (5th Cir. 1974) 17

Xerox Corporation v. Traves, 529 S.W.2d 418 (Mo. banc 1975) 26

Younger v. Harris, 401 U.S. 37 (1971) 4, 6, 13

Statutes and Miscellaneous Citations

28 U.S.C. § 1331 2

28 U.S.C. § 1343 .....2, 11

42 U.S.C. § 1983 .....I, 2, 6, 10, 11, 12, 18, 20, 23, 25, 26

§ 137.385, RSMo 1978 26

§ 137.720, RSMo Supp. 1980 .....5, 26

§ 137.750, RSMo Supp. 1980 .....5, 26

§ 138.110, RSMo 1978 26

§ 138.430, RSMo 1978 26

§ 139.031, RSMo 1978 26

§ 139.290, RSMo 1978 26

17 Wright, Miller & Cooper, Federal Practice and Procedure, § 4237 (1978) 24

28 U.S.C. § 1341 .....I, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14 16, 17, 18, 19, 20, 21, 22, 23, 24, 26

§ 1341 .....12, 15

No. 80-427

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

FAIR ASSESSMENT IN REAL ESTATE ASSOCIATION, INC., et al.,
Petitioners,

v.

GENE McNARY, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS WILLIAMS, OTTO AND SNYDER

STATEMENT OF THE CASE

On June 2, 1979, the petitioners filed this action in the United States District Court for the Eastern District of Missouri (J.A. 3-14). The complaint alleged that the petitioners had been deprived of their rights to due process of law and the equal protection of the law because of the following practices of all respondents:

> "(a) Properties with newly constructed improvements hereinafter referred to as 'new homes' are taxed upon roughly 33 1/3% of current true market value even though properties with older improvements, hereinafter referred to as 'old homes' are taxed, on average, upon approximately 22% of current market value.

> (b) Owners of residential property who exercise their right under state law to appeal the St. Louis County tax assessor's evaluation, and are successful, are specifically targeted for reassessment the following year." (J.A. 3-4).

The petitioners based their action upon the cause of action provisions of 42 U.S.C. § 1983 and upon the jurisdictional provisions of 28 U.S.C. § 1331 and § 1343(3). The complaint sought monetary relief upon those federal statutory bases. In essence, the petitioners sought monetary relief for alleged overpayments of their real property taxes in the years 1975 through 1979. The petitioners contended in their complaint that they had made these overpayments due to overassessments by the respondents during these tax years. The compensatory damages requested represent, exactly, the difference between the amount paid in property taxes in the years 1975 through 1979 based upon an alleged over-assessment of real property and the amount which petitioners allegedly would have paid in property taxes had their homes been assessed at a value representing the St. Louis County average rate of assessed evaluation (J.A. 6-7, 10, 13). Therefore, the amount of compensatory damages requested in this lawsuit represents an attempt to secure a state tax refund in the federal courts. The petitioners also sought punitive damages in the sum of $25,000 from each of the respondents (J.A. 13). As their prayer for relief on the second count of their complaint, alleging that owners of residential property exercising their right under state law to appeal the St. Louis County tax assessor's evaluation of their property are specifically targeted for reassessment the following year, plaintiffs' requested compensatory damages in the amount of $500 against each respondent and punitive damages in the amount of $50,000 against each respondent (J.A. 13-14). The petitioners wholly failed to specify how they were

actually damaged by $500 through the acts of each of the individuals named as defendants. Respondents Williams, Otto and Snyder, members of the Missouri State Tax Commission during calendar year 1978 and who are represented by this brief on the merits, were not alleged to have done any specific act in punishing plaintiffs for exercising their right to appeal their assessments.

On August 13, 1979, respondents McNary, Skaggs, Antonio, Pung and Schneider filed their motion to dismiss the petitioners' complaint with suggestions in support thereof (J.A. 15-17). One of the bases for that motion to dismiss was that the federal district court lacked jurisdiction due to the provisions of 28 U.S.C. § 1341. On August 17, 1979, respondents Williams, Otto and Snyder filed their answer to the complaint of the petitioners. In their answer, respondents Williams, Otto and Snyder also moved to dismiss petitioners' complaint for failure to state a cause of action upon which relief could be granted as to them.

On September 19, 1979, the petitioners filed a memorandum in oposition to the motion to dismiss of respondents McNary, Skaggs, Antonio, Pung and Schneider. Thereafter, on October 5, 1979, respondents McNary, Skaggs, Antonio, Pung and Schneider filed a reply to the petitioners suggestions in opposition to their motion to dismiss.

On November 7, 1979, Judge John F. Nangle of the United States District Court for the Eastern District of Missouri, Eastern Division, entered his memorandum and order dismissing the complaint of the petitioners in its entirety. 478 F.Supp. 1231 (E.D.Mo. 1979), printed in the appendix of the petition for writ of certiorari at pages A-3 through A-9. Judge Nangle found that the relief sought by the individual petitioners, actual damages to bring their

tax payments into line with those of other taxpayers, was in fact a request for a refund of the alleged overpayments of property taxes. *Fair Assessment in Real Estate Association, Inc.* v. *McNary*, 478 F.Supp. 1231, 1233 (E.D.Mo. 1979). He concluded that the Tax Injunction Act, Title 28 U.S.C. § 1341, bars suits for refunds as well as those for anticipatory relief. We quote:

> "To allow such suits would cause disruption of the states' revenue collection systems equal to that cause by anticipatory relief. State tax collection officials could be summoned into federal court to defend their assessments against claims for refunds as well as prayers for punitive damages, merely on the assertion that the tax collected was willfully and maliciously discriminatory against a certain type of property. Allowance of such claims would result in this Court being a source of appellate review for all state property tax classifications. This Court can not condone such a result." *Id.* at 1233-1234.

Judge Nangle also found that the subject of state property taxation was appropriate for the application of the principles of comity and federalism announced by this Court in *Younger* v. *Harris*, 401 U.S. 37 (1971). It should be emphasized that the citation by the district judge of *Younger* was ancillary to his specific holding that the Tax Injunction Act bars suits in federal courts for refunds of state property taxes. As such, the citation to *Younger* probably constitutes dicta.

The District Court found it undisputed that the petitioners had sufficient means to rectify what they considered an unjust property tax assessment situation via state judicial processes. *Id.* at 1234. The petitioners do not challenge the finding of the District Court that Missouri state processes were sufficient for the presentation of petition-

ers' claims concerning the assessment of real property in St. Louis County. It is clear that the state remedies available to the petitioners are plain, adequate and complete. State remedies do exist allowing the plaintiffs the opportunity to raise their claims of overpayment due to alleged overassessment in prior tax years. In addition, in a lawsuit filed by the individual petitioners in this case in the state courts of Missouri, the Missouri Supreme Court did find that the property tax assessments of St. Louis County were inequitable and directed the Missouri State Tax Commission to supervise St. Louis County officials to ensure that all property was properly reassessed. *State ex rel. Cassilly* v. *Riney,* 576 S.W.2d 325 (Mo. banc 1979). As a result of that Supreme Court decision, prompted by the petitioners' lawsuit, the Missouri State Legislature enacted statutes to fund and direct the general reassessment of all taxable real property within the several counties of the State of Missouri and gave the Missouri State Tax Commission authority to enforce and direct that general reassessment. See for example, Section 137.720, RSMo Supp. 1980 and Section 137.750, RSMo Supp. 1979. Therefore, as the petitioners do not contradict, not only are Missouri state remedies plain, adequate and complete, but petitioners, specifically, have been largely successful in remedying the inequities of real property evaluation and assessment in St. Louis County as a result of previous state court litigation.

On June 19, 1980, the United States Court of Appeals for the Eighth Circuit, en banc, affirmed the judgment of the District Court. 622 F.2d 415 (8th Cir. 1980), set forth in the petition for certiorari at pages A-1 to A-2. No separate opinion was issued by the Court of Appeals at the time of affirmance and the case was affirmed by an equally divided appellate court sitting *en banc.*

SUMMARY OF ARGUMENT

This case presents the issue of whether a § 1983 complaint for actual and punitive damages, in which the "actual damages" clearly consist of a request for a refund of state property taxes paid in previous years, may or should be entertained in the federal courts. The District Court, affirmed without opinion by the Court of Appeals, dismissed the complaint finding it was barred by the Tax Injunction Act, 28 U.S.C. § 1341. The District Court also cited *Younger* v. *Harris*, 401 U.S. 37 (1971), and the principles of comity, federalism and absention set forth therein, although that court clearly found § 1341 to be a jurisdictional bar. It is submitted that the Court is not limited to a construction and application of § 1341, however. The dismissal by the District Court should also be judged against a backdrop of consistent judicial precedent restricting federal court jurisdiction over matters of state taxation.

I. If the Tax Injunction Act applies to the factual and legal allegations in petitioners' complaint, the District Court was barred from entertaining jurisdiction notwithstanding the fact that petitioners purported to file under a Reconstruction civil rights statute of expanding precedential importance. 42 U.S.C. § 1983. In finding § 1983 applicable to alleged deprivations of property rights, the Court reaffirmed a long line of cases restricting federal court jurisdiction over state tax matters, *Lynch* v. *Household Finance Corporation*, 405 U.S. 538 (1972), as "a subject governed by unique considerations . . ." in which the Court has "repeatedly barred anticipatory federal adjudication." Where § 1983 and § 1341 conflict, the jurisdictional bar of the latter must prevail. *Rosewell* v. *LaSalle National Bank*, ____ U.S. ____, 101 S.Ct. 1221 (1981); *Bland* v. *McHann*, 463 F.2d 21 (5th Cir. 1972); *American*

Commuter's Association v. *Levitt,* 405 F.2d 1148 (2nd Cir. 1969).

II. The District Court appropriately dismissed the complaint, apart from the bar of § 1341, on the basis of a distinct line of Supreme Court cases limiting federal jurisdiction over matters of state taxation. In effect, a separate line of precedent, in the nature of comity and federalism concepts, dictated dismissal.

In a case precisely on point, the Court declined to reach the merits of a case in which a taxpayer was seeking damages, similar to a tax refund, due to an allegedly unconstitutional property assessment and evaluation, some thirteen years before Congress enacted the Tax Injunction Act. *First National Bank* v. *Board of County Commissioners,* 264 U.S. 450 (1924). Again before the enactment of § 1341, the Court refused to enjoin state tax collection because of its "scrupulous regard for the rightful independence of state governments . . . and a proper reluctance to interfere by injunction with their fiscal operations. . . ." *Matthews* v. *Rodgers,* 284 U.S. 521 (1932).

After 1937 when § 1341 was enacted, the Court continued to exercise restraint in reviewing state tax cases whether or not the Act specifically barred jurisdiction. Therefore, the Court has refused to entertain suits for declaratory judgments seeking declarations of unconstitutionality of state tax statutes even though § 1341 does not specifically refer to declaratory relief. *Great Lakes Dredge & Dock Company* v. *Huffman,* 319 U.S. 293 (1943).

Therefore, there is substantial precedent for affirming the lower courts even if § 1341 is found not to apply in this case.

III. Rightfully, the federal courts have found the Tax Injunction Act a jurisdictional bar in a broader category of cases than just those seeking injunctive relief.

Unanimously, those federal courts confronted with the issue have found § 1341 to bar actions for declaratory judgment. Without relying precisely on § 1341, this Court has reached the same result. *Great Lakes Dredge & Dock Company* v. *Huffman, supra.*

The better reasoned decisions of lower federal court have also found § 1341 to be a jurisdictional bar to suit for tax refunds and damages. Judge Frank Johnson, respecting a suit for damages arising out of state taxation, logically found that damages, and especially punitive damages, like requests for anticipatory relief, are still "designed to deter collection of the taxes" assessed by state and local tax officials. *Advertiser Company* v. *Wallace,* 446 F.Supp. 677 (N.D.Ala. 1978).

IV. However petitioners chose to denominate their prayer for relief, clearly what is being sought is a refund of property taxes paid in previous years. The "actual damages" they claim are measured by the difference in what they paid in property taxes from 1975-1979 and what they allege they should have paid. Once the inescapable conclusion is reached that this is a tax refund case, the application of § 1341 and Supreme Court precedent to bar federal court jurisdiction is mandated. The District Court properly relied on *Kelly* v. *Springett,* 527 F.2d 1090 (9th Cir. 1975) and *Bland* v. *McHann,* 463 F.2d 21 (5th Cir. 1972) in so holding. An action for a refund is an integral part of state tax administration, and § 1341 should be read as a broad restriction on federal jurisdiction in suits that impede state tax administration. Do petitioners really believe that a suit for damages against state and local tax officials, seeking recovery of an alleged overpayment of taxes, will not interfere with the fiscal process of tax collection and deter tax officials from performing their duties to assess, levy and collect taxes?

V. This term, the Court refused to entertain, on the merits, a lawsuit alleging deprivation of Fourteenth Amendment property rights where the plaintiff had refused to avail himself of complete and adequate state tort remedies. *Parratt* v. *Taylor*, ____ U.S. ____, 49 U.S.L.W. 4509 (1981). The same principle should be applied to state tax refund cases, especially in light of the historical reluctance of the Court to interfere in state tax matters, because, as petitioners do not dispute, there is a plain, speedy, efficient and complete Missouri remedy to redress their grievances.

This lawsuit is especially litigious since these very parties have successfully fought for a general reassessment of property taxes in St. Louis County in the courts of Missouri. In addition, the state legislature has followed the lead of the Missouri Supreme Court by enacting legislation to fund, coerce, and supervise the reassessment process.

VI. It is not logically consistent that the Tax Injunction Act should bar suit by taxpayers who have refused to pay taxes and seek to enjoin the collection thereof, but does not, as petitioners argue, bar suit by taxpayers who have paid taxes under protest and wish to seek refunds in the federal courts. In both situations, the same threshold issue must be determined, *i.e.*, is the tax assessment, levy or collection constitutional. In its most recent pronouncement on the subject the Court determined that § 1341 did apply to the taxpayer refusing to pay even though state processes for redress were less than perfect. *Rosewell* v. *LaSalle National Bank*, ____ U.S. ____, 101 S.Ct. 1221 (1981). It should also apply to the taxpayer who pays, having a similar underlying disenchantment with the taxing procedure, and wants a federal forum.

The issue before the Court, therefore, is whether the

Tax Injunction Act and *stare decisis* should apply to a complaint alleging an unconstitutional tax assessment, pursuant to § 1983, and seeking a tax refund denominated as damages. The answer must be in the affirmative. To hold otherwise would make the federal courts an integral part of the state taxation process and require their approval of state tax law and procedure each time a taxpayer believes he has been taxed unfairly by state and local officials. Surely, Congress could not have intended § 1983 to make state tax courts out of the federal judiciary. Such an immense expansion in federal court jurisdiction is not only unwarranted legally but imprudent as well.

ARGUMENT

I.

It is clear that when a complaint alleging federal court jurisdiction under § 1983 collides full force with the specific congressional limitation on federal jurisdiction embodied by § 1341, the limitation on federal jurisdiction must prevail.

The petitioners filed a complaint in the United States District Court for the Eastern District of Missouri alleging a cause of action under Title 42 U.S.C. § 1983 and its jurisdictional counterpart, Title 28 U.S.C. § 1343(3). Despite the important historical ramifications of §1983 as the vehicle by which the deprivation of federally protected rights are to be redressed, and the apparently expanding parameters of § 1983 jurisprudence,[3] nevertheless, the Tax Injunction Act, Title 28 U.S.C. § 1341, precludes an exercise of jurisdiction by the federal courts over the facts alleged in the petitioners' complaint.

The respondents do not dispute that petitioners can, or perhaps more precisely could, state a theoretical cause of action invoking the necessary elements of a § 1983 lawsuit. Even though the constitutional right asserted by the petitioners in their complaint was clearly an allegation of a property right deprivation (inequities in St. Louis County real estate assessment and taxation which allegedly resulted in their paying more property taxes than they should have been required to pay), a § 1983 case can be asserted for the deprivation of property rights absent a specific jurisdictional impediment. See *Lynch* v. *Household Finance Corporation*, 405 U.S. 538 (1972). However, in extending § 1983 to

---

[3]See *Maine* v. *Thiboutot*, ____ U.S. ____, 100 S.Ct. 2502 (1980); *Owen* v. *City of Independence*, 445 U.S. 622 (1980); *Gomez* v. *Toledo*, 446 U.S. 635 (1980); and *Lynch* v. *Household Finance Corporation*, 405 U.S. 538 (1972).

include alleged deprivations of property rights, this Court took care to reaffirm the validity of its previous decisions restricting federal court jurisdiction over matters involving the collection of state taxes. In doing so, the Court clarified the proper relationship between § 1983 and § 1341. At footnote 6 of the *Lynch* opinion, the Court stated in reference to cases which had been cited by the respondents in support of a "personal rights distinction":

> "All of these cases involve constitutional challenges to the collection of state taxes. Congress has treated judicial interference with the enforcement of state tax laws as a subject governed by unique considerations and has restricted federal jurisdiction accordingly. . . ." *Id.* at 542 n.6.

After quoting § 1341, the *Lynch* opinion, same footnote, continued:

> "We have repeatedly barred anticipatory federal adjudication of the validity of state tax laws. [Citation omitted]. The decisions cited by respondents may, therefore, be seen as consistent with congressional restrictions of federal jurisdiction in this special class of cases, and with longstanding judicial policy." *Id.*

The Tax Injunction Act imposes clear limitations on federal court jurisdiction which may not be avoided by an attempt to state a cause of action under § 1983. Where these two federal statutory sections conflict, the specific limitations of § 1341 must prevail. *Rosewell* v. *LaSalle National Banks*, ____ U.S. ____, 101 S.Ct. 1221 (1981). *Bland* v. *McHann*, 463 F.2d 21, 25 (5th Cir. 1972); *American Commuter's Association* v. *Levitt*, 405 F.2d 1148, 1151 (2nd Cir. 1969). Therefore, if § 1341 applies to the factual and legal allegations of the petitioners' complaint, then the District Court was manifestly correct in dismissing the complaint on the basis of that federal court jurisdictional bar.

II.

The petitioners' complaint was appropriately dismissed, completely aside from the existence of § 1341, and the district judge appropriately referred to the principles of comity which dictate such result.

The passage by Congress, in 1937, of the Johnson Act, now Title 28 U.S.C. § 1341, did not introduce a new concept into federal court jurisdictional concepts. The district judge specifically referred to *Younger* v. *Harris,* 401 U.S. 37 (1971). However, justification for a federal court not entertaining jurisdiction over matters of state taxation, particularly susceptible to resolution via state processes, need not be based on any of the general abstention doctrines. Quite aside from the precepts of *Burford, Pullman* and *Younger* abstention, there is a separate and distinct line of federal cases justifying a limitation of jurisdiction over state tax matters where there are plain, adequate and speedy remedies available in the state system.

Federal judicial restraint in matters of state tax administration was announced by this Court substantially before Congress found it necessary to enact § 1341. *First National Bank* v. *Board of County Commissioners,* 264 U.S. 450 (1924), is particularly apropos to this case. There, the Court was faced with an action to recover the amount of certain state taxes on the claim of a taxpayer that its property (shares in a bank) had been assessed upon an evaluation grossly in excess of the value of property of other similar taxpayers in separate counties of the state. As in this case, the taxpayer contended in this Court that taxes were assessed and collected in contravention of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. In that case, as in this one, the taxpayer was suing to recover taxes alleged to have been illegally exacted, that is, the petitioner was seeking a tax refund. This Court af-

firmed the judgment of the district court holding that it was precluded from reaching the merits of the complaint because taxpayers had not availed themselves of the adequate state remedy. *Id.* at 455-456. This case is precisely on point, representing precise judicial precedent for affirmance of this case.

In another case, also decided before the enaction of § 1341, a taxpayer sought a federal forum to adjudicate the constitutional validity of certain state tax collections. In *Matthews* v. *Rodgers*, 284 U.S. 521 (1932), this Court determined, without § 1341 being available to it, that it should not enjoin the collection of state taxes where there were plain, adequate and complete state remedies.

It is clear, therefore, that the enaction by Congress of the Tax Injunction Act hardly constituted a revolution. In point of fact, the statute merely codified existing Supreme Court precedent. Also, this Court has continued to exercise restraint in dealing with state tax matters without necessarily relying upon § 1341.

After the enactment of § 1341, the Court decided *Great Lakes Dredge & Dock Company* v. *Huffman*, 319 U.S. 293 (1943). In that case, the Court was asked to issue a declaratory injunction that a certain state tax was unconstitutional. Acknowledging that § 1341 did not expressly include declaratory relief within its ambit, the Court nevertheless withheld declaratory relief, quite apart from any jurisdictional bar implicit in the Tax Injunction Act, relying on *Matthews* v. *Rodgers, supra*, and holding that where a "plain, adequate and complete" state remedy existed, the taxpayer must go to the state courts with ultimate review in the Supreme Court. *Id.* at 297.

The Court reaffirmed its policy of restraint in interferring with a state's collection of its revenue, as embodied

both in pre- and post- § 1341 judicial precedent, in *Tully* v. *Griffin*, 429 U.S. 68 (1976).

In its most recent case interpreting the Tax Injunction Act, the Court appeared, in footnotes, to reaffirm the concept that federal courts may withhold relief in cases involving matters of state taxes even if the Tax Injunction Act is not specifically applicable. *Rosewell* v. *LaSalle National Bank*, ____ U.S. ____, 101 S.Ct. 1221, 1229 n.15, 1235 n.33 (1981).

Therefore, apart altogether from the jurisdictional bar of § 1341, a consistent and substantive line of Supreme Court cases support the decision of the District Court to dismiss the complaint of the petitioners in this case.

> "The scrupulous regard for the rightful independence of state governments which should at all time actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved. . . ." *Matthews* v. *Rodgers*, *supra*, 284 U.S. at 525-526.

The above-stated quotation from *Matthews* was cited by the Court with approval in *Great Lakes Dredge & Dock Company* v. *Huffman*, *supra*, 319 U.S. at 298, a case which did not involve mere injunctive relief but a request for a declaratory judgment.

III.

Federal courts have not found the jurisdictional bar of § 1341 limited only to suits seeking injunctive relief.

The Tax Injunction Act provides that a district court "shall not enjoin, suspend or restrain" matters pertaining to state taxes. The petitioners have emphasized that the plain meaning of that statute would apparently include within its ambit only purely equitable cases seeking injunctive relief. The logical extension of the arguments made by the petitioners would lead to the conclusion that only those complaints seeking to enjoin the enforcement of state tax statutes or practices are barred by § 1341.

Although the statute appears only to mention injunctive relief, it has long been the position of the lower federal courts that the statute's prohibition extends to declaratory relief as well. See *Coon* v. *Teasdale*, 567 F.2d 820 (8th Cir. 1977); *Aluminum Company of America* v. *Department of the Treasury of the State of Michigan*, 522 F.2d 1120 (6th Cir. 1975); *Ford Motor Credit Company* v. *Louisiana Tax Commission*, 440 F.2d 675 (5th Cir. 1971); *Green* v. *Klinkofe*, 422 F.Supp. 1021 (N.D.Ind. 1976); *Fulton Market Cold Storage* v. *Cullerton*, 582 F.2d 1071 (7th Cir. 1978), *cert. denied*, 439 U.S. 1121 (1979).

More persuasively, this Court, after the enactment of § 1341, declared itself unwilling to entertain declaratory judgment suits challenging the constitutionality of state tax statutes where adequate state administrative and judicial remedies existed. We quote from *Great Lakes Dredge & Dock Company* v. *Huffman*, 319 U.S. 293, 298, 299 (1943):

> "Congress recognized and gave sanction to this practice of federal quity courts by the Act of August 21, 1937, 50 *Stat 738, c 726, enacted as an amendment to § 24 of the Judicial Code, 28 USCA § 41(1), 8 FCA title 28, § 41(1) [§ 1341]. This provides that 'no dis-

trict court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or inequity in the courts of such State.' The earlier refusal of federal courts of equity to interfere with the collection of state taxes unless the threatened injury to the taxpayer is one for which the state courts afford no adequate remedy, and the confirmation of that practice by Congress, have an important bearing upon the appropriate use of the declaratory judgment procedure by the federal courts as a means of adjudicating the validity of state taxes.

It is true that the Act of Congress speaks only of suits 'to enjoin, suspend, or restrain the assessment, levy, or collection of any tax' imposed by state law, and that the declaratory judgment procedure may be, and in this case was, used only to procure a determination of the rights of the parties, without an injunction or other coercive relief. It is also true that that procedure may in every practical sense operate to suspend collection of the state taxes until the litigation is ended. But we find it unnecessary to inquire whether the words of the statute may be so construed as to prohibit a declaration by federal courts concerning the invalidity of a state tax. For we are of the opinion that those considerations which have led federal courts of equity to refuse to enjoin the collection of state taxes, save in exceptional cases, require a like restraint in the use of the declaratory judgment procedure."

A number of federal courts have extended the bar of § 1341 to cases seeking a refund of taxes paid in previous tax years. See *United States* v. *State Tax Commission of the State of Mississippi*, 505 F.2d 633 (5th Cir. 1974); *Gray* v. *Morgan*, 371 F.2d 172 (7th Cir. 1966); *Evangelical Catho-*

lic Communion, Inc. v. *Thomas,* 373 F.Supp. 1342 (D.Vt. 1973), *aff'd,* 493 F.2d 1397 (2nd Cir. 1974); *Natural Gas Pipe Line Company of America* v. *Sergeant,* 337 F.Supp. 88 (D.Kans. 1972); *Kelly* v. *Springett,* 527 F.2d 1090 (9th Cir. 1975); and *Bland* v. *McHann,* 463 F.2d 21 (5th Cir. 1972), *cert. denied,* 410 U.S. 966 (1973).

Although respondents Williams, Otto and Snyder believe that Judge Nangle's characterization of the plaintiffs' lawsuit as one for a refund, warranting the application of § 1341, several federal courts have held specifically that suits for damages filed pursuant to Title 42 U.S.C. § 1983 are barred by the precepts of § 1341. *Advertiser Company* v. *Wallace,* 446 F.Supp. 677 (N.D.Ala. 1978); *Ludwin* v. *City of Crambridge,* 592 F.2d 606 (1st Cir. 1979); *Hickmann* v. *Wujick,* 488 F.2d 875 (2nd Cir. 1973); *Horn* v. *O'Cheskey,* 378 F.Supp. 1280 (D.N.M. 1974); and *Evangelical Catholic Communion, Inc.* v. *Thomas, supra.* In the *Advertiser Company* case, Judge Frank Johnson addressed the request for monetary damages in the plaintiff's complaint as follows:

> "Arguably, the case law leaves open the precise issue presented here—i. e., whether a Section 1983 action seeking only compensatory and punitive damages is barred by Section 1341. Yet, the same policies which precluded awarding anticipatory relief or a refund should also preclude an award of the damages sought in this case. Although perhaps less coercive than anticipatory relief and less intrusive than a refund, the damage award plaintiff seeks, especially its request for punitive damages, still is designed to deter collection of the taxes now being assessed by defendants. . . ." *Advertiser Company* v. *Wallace, supra* at 679-680.

Therefore, it is clear that many of the lower federal courts, and this Court as well, have refused to entertain

lawsuits challenging matters of state taxation wherein the relief sought was *not* purely injunctive.

IV.

The relief sought by petitioners can clearly be characterized as a suit for a refund of taxes paid in previous years which is barred by § 1341.

The petitioners contend at length, but without persuasion, that the relief they seek amounts to damages against each of the respondents individually and not a refund of taxes paid in previous years. Petitioners' protestations that the relief they seek, denominated by them as actual and punitive damages, is not a tax refund, are, to borrow from William Shakespeare, "full of sound and fury, signifying nothing."

The petitioners seek "damages" against the county defendants for the years 1975, 1976, and 1977, in the amounts of $753, $754 and $1048 respectively. The petitioners seek "damages" against all defendants, including the members of the Missouri State Tax Commission represented on this brief, for the years 1978 and 1979 in the amount of $1223 for each year. The petitioners then tag on a request for punitive damages to their prayer for relief on the first count of the complaint (J.A. 13). These "actual damages" equal exactly the difference between what petitioners paid in real estate property taxes for the years 1975 to 1979 inclusive and what they alleged they should have paid had their home been assessed at a value commensurate with the St. Louis county-wide average of assessed evaluation. How can it reasonably be claimed that these "damages" do not equate to a request for a tax refund for taxes paid in previous years? The bogus claim for punitive damages does not alter the essential nature of the petitioners' case. Likewise, the possible nonavail-

ability of punitive damages in the state courts on a refund case does not invalidate the adequacy of "due process" afforded by Missouri in assessment cases. *Parratt* v. *Taylor*, ____ U.S. ____, 49 U.S.L.W. 4509, 4513 (1981).

We anticipate that the petitioners will point out their claim for an allegedly different type of damage in Count II of their complaint (J.A. 13-14). On that count, petitioners purport to seek $500 in actual damages against each of the respondents. Such claim is totally without substance upon its face. How can petitioners have been *actually* damaged over and above the amount of alleged excess taxes they paid? Apparently, petitioners are seeking compensation for attorneys' fees and costs arising out of state administrative proceedings, which obviously cannot be awarded by the federal courts.

Once the inescapable conclusion is reached that this is a suit for a tax refund, the application of the jurisdictional bar of § 1341 makes manifest sense. The District Court so held relying primarily upon *Kelly* v. *Springett*, 527 F.2d 1090 (9th Cir. 1975); and *Bland* v. *McHann*, 463 F.2d 21 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973). *Bland* is the best reasoned of the lower court cases which have considered whether the jurisdictional bar of § 1341 should be applied to tax refund cases. The plaintiffs in *Bland* were Negro property owners who charged that increases in their property tax assessments were the result of racial discrimination and in retaliation for certain prior demonstrations. They sought an injunction against increases in real property assessments on the basis of race, an injunction against the levying, assessing and collecting of real property taxes not based on constitutional and nondiscriminatory procedures, and an money judgment amounting to a tax refund plus interest. It is important to note that the plaintiffs in *Bland*, as the petitioners in the present case, framed the relief requested in terms of a § 1983 suit

for damages. The facts in that case were egregious in that the Fifth Circuit apparently assumed that the tax assessment had indeed discriminated against Blacks. *Id.* at 23. After tracing Supreme Court precedent, the court in *Bland* reached the following conclusion:

> "First National Bank v. Board of County Commissioners, supra, [264 U.S. 450 (1924)], clearly would leave taxpayers to their state remedy, if it is plain, adequate and complete. The cases involving anticipatory relief further expound upon the idea that in matters involving state tax law state remedies must be pursued where they are plain, adequate and complete. An action for a refund is an integral part of state tax administration. We see no reason to bifurcate the state remedy. Section 1341 compels the taxpayers to seek compensatory relief through a plain, speedy and efficient state remedy. An ancillary claim for a refund should properly be joined with it.
>
> Thus, based upon all of the foregoing we conclude that it is the duty of federal courts, in actions for the refund of state taxes, to defer to state adminisrative and judicial remedies where the state remedy is 'plain, speedy and efficient.' " *Id.* at 27-28.

Relying upon *Bland* v. *McHann, supra*, the Fifth Circuit reaffirmed its position that tax refunds are barred by § 1341 in *United Gas Pipe Line Company* v. *Whitman*, 595 F.2d 323 (5th Cir. 1979). Again, we quote:

> "The concept that section 1341 is not a narrow statute aimed only at injunctive interference with tax collection, but is rather a broad restriction on federal jurisdiction in suits that impede state tax administration, has continued to gain credence in the federal courts. The Supreme Court recently stated that '[t]he statute has its roots in equity practice, in principles

of federalism, and in recognition of the imperative need of a State to administer its own fiscal operations.' *Tully* v. *Griffin, Inc., supra,* 429 U.S. at 73, 97 S.Ct. at 222. . . .

United would have suits for tax refund exempted from the broad jurisdictional barrier of section 1341 on the grounds that refund suits do not restrain the actual collection of any tax and involve relatively minimal interference with state tax administration. United's contentions are foreclosed by *Bland,* and do not stand up to practical scrutiny.

. . . .

United's efforts to distinguish *Bland* are unpersuasive. United contends that since the complaint in *Bland* sought both injunctive and refund relief, the decision is not controlling in cases such as this one, where only refund relief is sought. United's distinction, however, does not account for the specific statement in *Bland* that refund suits are barred because they interfere with state tax administration. That interference is not heightened because the plaintiffs attach a prayer for injunctive relief that is patently outside the power of the federal court to provide. *Bland* rests on the principle that the judicial interpretation and enforcement of state tax law should rest with the state courts alone, and that a suit for refund is as much an interference with that function as a suit for declaratory or injunctive relief. . . ." *Id.* at 326-327.

Plaintiffs rely upon the case of *Fulton Market Cold Storage Company* v. *Cullerton,* 582 F.2d 1071 (7th Cir. 1978), *cert. denied,* 439 U.S. 1121 (1979). The decision in *Fulton Market* is suspect for several reasons. First, the court began its decision by declaring the case to be one of first impression regarding the application of § 1341 to a

suit seeking the award of damages. However, no fewer than five federal courts had previously addressed this precise question, all of them rejecting attempts by plaintiffs to obtain damages pursuant to § 1983. See *Hickmann* v. *Wujick*, 488 F.2d 875 (2nd Cir. 1973); *Advertiser Company* v. *Wallace*, 446 F.Supp. 677 (M.D.Ala. 1978); *Kistner* v. *Miliken*, 432 F.Supp. 1001 (E.D.Mich. 1977); *Horn* v. *O'Cheskey*, 378 F.Supp. 1280 (D.N.M. 1974); and *Evangelical Catholic Communion, Inc.* v. *Thomas*, 373 F.Supp. 1342 (D.Vt. 1973), *aff'd*, 493 F.2d 1397 (2nd Cir. 1974). Second, the Seventh Circuit completely ignored those cases wherein federal courts had dismissed actions seeking refunds of taxes, and gave no credence whatsoever to the reasoning expressed in those opinions for applying the bar of § 1341 to this situation. Finally, Judge Sharp held in *Fulton Market* that it was necessary to allow the case to proceed since it was based on one of the civil rights statutes, 42 U.S.C. § 1983. In so doing, the court completely disregarded the plethora of federal case law to the contrary. (See Point I of the Argument section of this brief).

The other cases relied upon by the petitioners are equally unpersuasive. In the case of *Ott* v. *Mississippi Valley Barge Line Company*, 336 U.S. 169 (1949), the provisions of § 1341 were not even brought into issue. Therefore, it is absurd to contend that the Supreme Court has "held without comment," that tax refund cases are not barred by § 1341. In addition, the position of the court in *Central Steel & Wire Co.* v. *City of Detroit*, 99 F.Supp. 639 (E.D. Mich. 1951), was later rejected entirely by that same court in *Kistner* v. *Miliken, supra.* Finally, the remaining two cases relied upon by the plaintiffs, *Southland Mall, Incorporation* v. *Garner*, 293 F.Supp. 1370 (W.D.Tenn. 1968), and *Louisville and Nashville Railroad Company* v. *Atkins*, 390 F.Supp. 576 (M.D.Tenn. 1975), are clearly the minority view which should be rejected by this Court in determining

the applicability of § 1341 to this case. See 17 Wright, Miller & Cooper, Federal Practice and Procedure, § 4237 (1978).

Obviously, the petitioners' lawsuit is one for a refund for state taxes paid in previous years which should be barred by § 1341. Even if we were to accept the petitioners' nomenclature of their complaint as one for damages, the better reasoned lower court opinions support the application of the § 1341 jurisdictional bar to damage actions relating to the collection, levying and assessment of state taxes.

V.

Missouri's administrative and judicial processes provide to the petitioners a plain, speedy and efficient remedy.

The petitioners have not asserted before this Court that the remedies, available to them under Missouri law, are not plain, speedy, efficient and complete. The petitioners have simply ignored the availability of state remedies to argue that the Tax Injunction Act does not apply to limit federal court jurisdiction over a complaint stated in terms of a 1983 damage action. The recent decision of this Court in *Parratt* v. *Taylor*, ____ U.S. ____, 49 U.S.L.W. 4509 (1981), should be applied to the petitioners' tactics in this case. That is, assuming the allegations in petitioners' complaint to be true, they have not been deprived of their Fourteenth Amendment property rights without "due process of law" where the state provides a full procedure for the redress of the alleged violation.

> "It is argued that the State does not adequately protect a respondent's interest because it provides only for an action against the State as opposed to its individual employees, it contains no provisions for punitive damages, and there is no right to a trial by jury. Although the state remedies may not provide the re-

spondent with all the relief which may have been available if he could have proceeded under § 1983, that does not mean that the state remedies are not adequate to satisfy the requirements of due process. The remedies provided could have fully compensated the respondent for the property loss he suffered, and we hold that they are sufficient to satisfy the requirements of due process.

Our decision today is fully consistent with our prior cases. To accept respondent's argument that the conduct of the state officials in this case constituted a violation of the Fourteenth Amendment would almost necessarily resolve in turning every alleged injury which may have been inflicted by a state official acting under 'color of law' into a violation of the Fourteenth Amendment cognizable under § 1983. It is hard to perceive any logical stopping place to such a line of reasoning. Presumably, under this rationale any party who is involved in nothing more than an automobile accident with a state official could allege a constitutional violation under § 1983. Such reasoning 'would make the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the states.' *Paul* v. *Davis*, 424 U.S. 693, 701. We do not think that the drafters of the Fourteenth Amendment intended the amendment to play such a role in our society." *Id.*, 49 U.S.L.W. at 4513.

The reasoning of *Parratt* is especially persuasive in view of the clear Supreme Court precedent favoring federal court restraint in matters of state taxation.

Not only have petitioners not alleged that the state remedies are inadequate, they could not successfully have done so. There can be no doubt that remedies do exist

allowing the petitioners the opportunity to raise their claims of excess taxes paid due to alleged overassessment of their property in prior tax years. See Sections 137.385, RSMo 1978; 138.110, RSMo 1978; 138.430, RSMo 1978; 139.031, RSMo 1978; 139.290, RSMo 1978; *Breckenridge Hotels Corporation* v. *Leachman,* 571 S.W.2d 251 (Mo. banc 1978); *Xerox Corporation* v. *Traves,* 529 S.W.2d 418 (Mo. banc 1975); *John Calvin Manor, Inc.* v. *Aylward,* 517 S.W.2d 59 (Mo. 1974). It has also been recognized by the Supreme Court of Missouri that claims filed pursuant to the provisions of 42 U.S.C. § 1983 are cognizable in the state courts. See *Stafford* v. *Muster,* 582 S.W.2d 670 (Mo. banc 1979); *Shipiro* v. *Columbia Union National Bank & Trust Company,* 576 S.W.2d 310 (Mo. banc 1978). In addition, these specific petitioners have already been successful in prompting a general reassessment of real property in St. Louis County. In *State ex rel. Cassilly* v. *Riney,* 576 S.W.2d 325 (Mo. banc 1979), the Missouri Supreme Court directed the Missouri State Tax Commission to supervise the reassessment of all real estate in St. Louis County. The Missouri Legislature was responsive to this opinion, and gave a newly created responsibility of supervision to the Missouri State Tax Commission, by enacting legislation to require and fund general reassessments of real estate for property tax purposes. See for example, Sections 137.720 and 137.750, RSMo Supp. 1980.

VI.

The petitioners should not be allowed to circumvent the jurisdictional bar of § 1341 as a result of the purely procedural distinction between an injunction against the enforcement of state tax laws and a tax refund against state tax officials.

In this Court's most recent opinion relating to the Tax Injunction Act, the underlying facts were remarkably

similar to those presented by this case, with the procedural posture in which the two cases reached this Court being slightly divergent. In *Rosewell* v. *LaSalle National Bank*, ____ U.S. ____, 101 S.Ct. 1221 (1981), a taxpayer in Cook County alleged that local tax officials had overassessed her property resulting in an excessive property tax. In *Rosewell* the taxpayer refused to pay the taxes and brought an action in federal court for injunctive relief against the local tax officials. As is apparent, the only real distinction between the facts in *Rosewell* and the facts in the present case are that the present petitioners paid their property taxes for the years 1975 through 1979 and now seek what is basically a refund. In *Rosewell* the Court found the action of the taxpayer barred by the Tax Injunction Act because Illinois provided a legal remedy which was "plain, speedy and efficient."

It defies logic to contend, as petitioners do, that the Tax Injunction Act bars a lawsuit to enjoin the collection or assessment of state taxes, where a taxpayer has refused to pay, but does not bar a lawsuit seeking a refund of state taxes, where the taxpayer has paid in advance of filing his federal court suit. Such a result would substitute for the administrative and judicial tax refund procedures of every state, a federal court forum to adjudicate the legality by which state and local tax officials assess, levy and collect taxes. The fiction of a 1983 suit for damages, which in reality seeks a tax refund, should not be allowed to defeat

> "[T]he principle motivating force behind the Act; this legislation was first and foremost a vehicle to limit drastically federal district court jurisdiction to interfer with so important a local concern as the collection of taxes. 81 Cong. Rec. 1415 (1937) (remarks of Sen. Bone); *Great Lakes Dredge & Dock Co.* v. *Huffman, supra,* at 301 (Act 'predicated upon the

> desirability of freeing, from interference by the federal courts, state procedures which authorize litigation challenging a tax after the tax has been paid')." *Id.*, 101 S.Ct. 1233-1234.

With tax refunds for state taxes previously paid, as with injunctions directed against the enforcement of state tax laws, the exclusive remedy should reside with the states. We quote again from *Rosewell:*

> "When it passed the Act, Congress knew that state tax systems commonly provided for payment of taxes under protest with subsequent refund as their exclusive remedy. The Senate Report to the Act noted:
>
> > 'It is the common practice for statutes of the various States to forbid actions in State courts to enjoin the collection of State and county taxes unless the tax law is invalid or the property is exempt from taxation, and these statutes generally provide that taxpayers may contest their taxes only in refund actions after payment under protest. This type of State legislation makes it possible for the States and their various agencies to survive while long-drawn-out tax litigation is in progress.' S. Rep. No. 1035, 75th Cong., 1st Sess., p. 1 (1937). See H.R. Rep. No. 1503, 75th Cong., 1st Sess., p. 2 (1937).
>
> See also *Matthews* v. *Rodgers,* 284 U.S. 521, 526 (1932)." *Id.* at 1234.

Missouri does provide a tax refund procedure for taxes paid under protest even in situations wherein it is alleged that the excess taxes resulted from an inflated property assessment. *Breckenridge Hotels Corporation* v. *Leachman,* 571 S.W.2d 251 (Mo. banc 1978).

The Tax Injunction Act must be found to bar the pe-

titioners' lawsuit to avoid the anomaly that a taxpayer refusing to pay his taxes is barred from enjoining their collection, whereas a taxpayer paying his taxes under protest may sue in federal courts for recovery.

CONCLUSION

The judgment of the Court of Appeals, affirming the dismissal of the petitioners' complain by the District Court, should be affirmed.

Respectfully submitted,

JOHN ASHCROFT
Attorney General

MICHAEL L. BOICOURT
Assistant Attorney General

Supreme Court Building
P.O. Box 899
Jefferson City, Missouri 65102
(314) 751-3321

Attorneys for Respondents
Williams, Otto and Snyder

June, 1981